

CHAPTER 8

CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION UNDER THE 8(a) PROGRAM

BACKGROUND

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.¹

This philosophy expresses the basis for Federal programs supporting minority business enterprise, begun in 1969. At that time, Federal contracts were viewed as an effective means to stimulate the growth of the minority business community. Section 8(a) of the Small Business Investment Act of 1958 was determined to be an appropriate mechanism for awarding those contracts.

Section 8(a) authorized the SBA to enter into prime contracts with Federal agencies and to subcontract the performance of the contract to small business concerns or others. Executive Order No. 11458, signed by President Nixon on March 5, 1969, authorized the use of this provision to assist minority businesses, and established the "8(a) Program", as it is commonly called. That authority was later superseded by Executive Order No. 11625 of October 13, 1971.

A. AUTHORITY AND IMPLEMENTATION

The 8(a) program is authorized under Sections 7(j) and 8(a) of the Small Business Investment Act, as amended. The Competition in Contracting Act (CICA) specifically excludes contracts awarded through the 8(a) program from the requirement for full and open competition. The laws are implemented through the SBA regulations, 13 CFR Part 124, and FAR Subpart 19.8. Health and Human Services Acquisition Regulation _____ establishes HHS policy for the 8(a) program.

B. IDENTIFYING PROCUREMENTS FOR THE 8(a) PROGRAM

1. Types of Suitable Procurements

All procurement opportunities, including those under the Simplified Acquisition Threshold, should be viewed as a possible candidate for the 8(a) program. 8(a) firm or concerns are capable of performing virtually every type of manufacturing, service and construction contract. SBA publishes directories containing profiles of 8(a) concerns.

¹Executive Order 11625, October 13, 1971, paragraph 1.

Further, every 8(a) participant is required to be listed in the SBA's Procurement Network (ProNet) database. By gaining familiarity with the capabilities of firms in the 8(a) program, it becomes a fairly straightforward matter to recommend use of 8(a) procedures.

There are no limitations on the type or size of 8(a) procurements. However, for procurements with service or construction NAICS codes, **competition** among eligible 8(a) concerns is required when the estimated value of the procurement, including all options, exceeds \$3 million. For procurements with manufacturing NAICS codes, the threshold for competition is \$5 million. (FAR 19.805-1) The criteria for 8(a) competitions are the same as for other set-aside programs; that is, a reasonable expectation of receiving offers from at least two eligible 8(a) concerns and making award at a fair market price, if the procurement will exceed the 8(a) competition threshold. For indefinite quantity-indefinite delivery type contracts, the determination of whether the competition threshold is exceeded will be based on the maximum value of the procurement.

A proposed 8(a) procurement should not have been publicly synopsized as a small business set-aside and performed most recently by a small business. The procurement should also not require excessive subcontracting to be performed by other than the prospective 8(a) firm or concern (see FAR 52.219-14).

2. Identifying Procurements

Proposed procurements suitable for the 8(a) program can be identified in a number of ways that include:

- The OPDIV SBS can recommend an 8(a) contract during the regular procurement review process or during review of advance procurement plans or contract forecasts.
- The cognizant OPDIV technical office can suggest use of the 8(a) program.
- An 8(a) firm or concerns can market and identify the procurement.
- The SBA may request a particular requirement for the 8(a) program either through a direct recommendation by the PCR or by issuing a search letter.

3. Repetitive Set-Aside Policy

Once a product or service has been acquired successfully by a contracting office on the basis of an 8(a) set-aside, all future requirements for that specific product or service must be acquired using 8(a) set-aside procedures. This policy applies unless one of two conditions exist:

- (1) the contracting officer determines that there are no eligible 8(a) firm or concerns available for procurements below the threshold for competition; or
- (2) there is not a reasonable expectation that offers will be obtained from at least two eligible 8(a) concerns, for procurements exceeding the threshold for competition, and that award cannot be made at a fair market price.

If a contracting officer makes a determination to withdraw a product or service from the 8(a) program, the file shall be so documented and notice shall be given to the SBS and the Director, OSDDBU even if the product or service will be obtained through another set-aside program.

4. Search Letter Procedures

A search letter is a written request from the SBA that a prospective procurement be set aside for the 8(a) program. The SBA has authority to certify to a procuring agency its competence to perform a particular requirement and negotiate a mutually agreeable contract. SBA also has authority to appeal if agreement cannot be reached with the contracting officer.

Search letters may originate from any SBA level--district, regional or central office, and either recommend a particular 8(a) firm or concern as a source or request the procurement for 8(a) competition. As search letters certify the 8(a) firm's competence to perform the stated requirement, they must be given full consideration.

If the procuring agency determines that a proposed procurement should not be set aside for the 8(a) program, SBA may request reconsideration of the decision. However, to fall within the appeal criteria set forth in FAR 19.810, an SBA appeal must be signed by the SBA Administrator. A formal appeal will normally cite FAR 19.810 and must be received within specified timeframes. When a HHS contracting officer, program office or SBS receives a search letter, the contracting officer should take the following action:

- a. Assess the suitability of the proposed procurement for the 8(a) program. For example, where state-of-the-art results are likely only through full and open competition, or where the procurement has traditionally been

acquired from small business under set-aside procedures, an 8(a) set-aside may not be most advantageous to the Government. However, even if it is determined that the proposed procurement must be conducted using full and open competition, the 8(a) firm designated in the search letter should be given an opportunity to make a presentation as described below.

- b. Assess the status of the procurement. If the solicitation has not been issued, or has been issued as other than a small business set-aside, the contracting officer shall proceed with evaluation of the firm's capabilities. If the solicitation has been issued as a small business set-aside, the contracting officer shall telephone the SBA office, which sent the search letter and advise them. (Usually SBA will not accept a procurement for the 8(a) program if it has been solicited as a small business set-aside.) If SBA wishes to pursue the procurement, the contracting officer shall proceed with the evaluation of the firm's capabilities. If not, the contracting officer shall send a written notice to SBA confirming the disposition of the search letter.
- c. Review the capabilities of the proposed 8(a) firm or concern(s). Typically, this is done through an oral marketing presentation by the company to appropriate program, technical and procurement personnel. This presentation should **not** be a full-scale proposal effort nor require the firm to incur bid and proposal costs. The presentation does not obligate the OPDIV to set aside the proposed procurement for the 8(a) program. Nevertheless, should deficiencies be apparent, the contracting officer should question the firm and give them an opportunity to respond. The contract file should be documented regarding any unresolved deficiencies.
- d. Determine that the 8(a) concern is qualified and the procurement is suitable. The contracting officer should then offer the procurement to SBA as an 8(a) set-aside and proceed with the procurement process. If the procurement has been previously synopsisized in the **Directory of Federal Business Opportunities (FEDBIZ OPPS)**, the synopsis should either be canceled or amended, if a competitive 8(a) procurement will be conducted.
- e. Determine that the 8(a) firm is deficient, or the procurement is not appropriate for the 8(a) program. The contracting officer should send a letter to the SBA, to be coordinated with the SBS, providing the rationale for not setting aside the procurement. As backup, the contracting officer should provide the SBS a copy of the file documentation detailing the technical review of the 8(a) concern's capabilities.
- f. If more than one search letter is received for a given procurement. The capabilities of each identified firm or concern should be assessed. The

best qualified firm or concern should be offered the procurement, or it should be offered for 8(a) competition.

- g. The SBA Administrator may appeal a negative decision to the Secretary of the DHHS. The SBA must notify the contracting officer that an appeal is forthcoming within 5 working days after SBA receives the contracting officer's decision.
- h. Upon notice of SBA's intent to appeal, the contracting officer must promptly notify the SBS, who shall notify the Director, OSDDBU. All correspondence and other pertinent information not provided previously must be forwarded to the SBS, who shall then provide all documentation to the Director, OSDDBU. The SBA must file its written appeal to the OPDIV head or Secretary within 20 working days of their receipt of the adverse decision. Pending the decision on the appeal, the contracting officer shall suspend action on the procurement.
- i. Once the appeal is resolved, or if no appeal is received, and the proposed procurement is **not** to be set aside for the 8(a) program, the contracting officer must, at a minimum consider setting the requirement aside to other preference programs.
- j. If the contract will be full and open and require a subcontracting plan, the contracting officer must forward a copy of the entire solicitation mailing list to the SBA so that they may inform 8(a) and other small business concerns of potential subcontracting opportunities.
- k. If the requirement will be aside for the 8(a) program, the Contracting Officer should proceed according to the instructions provided in FAR 19.8.

C. OFFERING PROCUREMENTS TO THE SBA

When a suitable procurement (over \$100,000) has been identified, the contracting officer offers it to the SBA for award under the 8(a) program. A sample-offering letter is shown at Appendix 8-5. The offering letter must state the applicable NAICS code and size standard for the procurement, and include a copy of the statement of work. The proposed procurement can be offered for the 8(a) program in general, on behalf of a specific 8(a) firm, or for 8(a) competition.

For single source requirements, other than construction, the offering letter should be sent to the SBA district office that services the nominated 8(a) firm. For single source construction requirements, the offering letter should be sent to the SBA district office where the work is to be performed. For competitive requirements, other than

construction, the offering letter should be sent to the SBA district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the SBA district office servicing the geographical area in which all or the major portion of the construction is to be performed.

1. General Offers for the 8(a) Program

If a proposed procurement below the threshold for competition is offered for the 8(a) program in general, the SBA will select the 8(a) firm or concern to perform based on the capabilities, approved level of contract support in the business plan, and compliance with the competitive business mix requirements, if applicable. The firm or concern must meet the procuring agency's technical needs, but the final firm or concern selection rests with the SBA. SBA will promote the equitable geographic distribution of 8(a) sole source contracts.

2. Offers for a Particular 8(a) Firm or concern

If an 8(a) firm or concern has performed identical or similar work previously, or has marketed its capabilities in a certain area, a proposed procurement can be offered to the SBA on behalf of that firm or concern. Prior to offering procurements in this way, the OPDIV SBS or contracting officer should contact the SBA field office where the company's business plan is administered to verify that the firm or concern is a small business in the NAICS code to be performed. In addition, the CO shall ensure that the small business has not exceeded its business plan support level and is in compliance with the competitive business mix targets. If a search letter has been received from the SBA, the offering letter should reference it.

3. Technical Competition

With the advent of price competition in the 8(a) program, SBA will no longer approve separate technical competitions for the purpose of identifying a single firm or concern with which to negotiate price. **UNDER NO CIRCUMSTANCES MAY A LIMITED TECHNICAL COMPETITION BE CONDUCTED FOR SOLE SOURCE PROCUREMENTS. CONTRACTING AND PROGRAM OFFICES SHALL NOT USE THIS TECHNIQUE.** However, informal technical presentations may be used to select an 8(a) firm for single source procurements under the \$3 million competitive threshold.

4. Informal Technical Presentations

When several companies of similar capabilities market a procurement, or if the contracting officer or OPDIV SBS is aware that multiple capabilities exist in the 8(a) market, or when different approaches for solving a problem are possible, the OPDIV may hold informal technical presentations to determine the best firm or concern for a particular procurement. An offering letter does not need to be sent to the SBA until the best firm or concern is identified.

Contracting officers may invite several 8(a) firm or concerns (usually from three to seven) to give presentations on their capability to perform a specific procurement. The OPDIV shall not require the firm or concerns to develop elaborate technical presentations or to otherwise incur bid and proposal costs at this stage. In order to enable the 8(a) concerns to focus their presentations, the contracting officer may develop a list of salient characteristics and/or necessary expertise to perform the procurement. This list may be given to each of the invited firm or concerns, with a statement that the list is not inclusive and is not the statement of work (SOW). **DO NOT GIVE THE SOW TO VENDORS TO HELP THEM PREPARE FOR THESE PRESENTATIONS.** If the SOW is issued, SBA will consider that the procuring agency has initiated a competitive procurement.

The CO, and if possible, the SBS, shall attend the presentations with the program office staff. The CO or SBS shall make clear to all in attendance that the presentation is a marketing effort and not a commitment to offer a contract. No cost information may be solicited. After listening to the presentation, appropriate questions about the firm or concern's capabilities may be asked. Based on the informal technical presentations, OPDIV procurement, small business, and program personnel should select one 8(a) firm or concern with which to continue the acquisition process. An offering letter should be submitted to SBA on behalf of that concern (see 2. above).

5. Offers for Competitive Procurements

For procurements which exceed the threshold for competition, the offering letter should identify any geographic conditions which are important for contract performance and list the names of 8(a) firm or concerns, if any, which have already expressed an interest in the procurement. Additionally, identify any search letters, which have been sent for that procurement.

6. SBA Response

SBA will evaluate the offer and within 5 working days from receipt of the offer, either accept or reject the proposed procurement for the 8(a) program. Prior to accepting the offer, SBA will determine whether this would have an adverse impact on another small business. An adverse impact is generally considered to exist if the contract is currently being performed by a small business (not in the 8(a) program) and accounts for 25% or more of that concern's annual receipts

If below the threshold for competition, the acceptance letter will also identify the firm or concern selected to perform the procurement. In most cases, SBA will authorize the procuring agency to conduct negotiations directly with that firm or concern.

For competitive procurements, the acceptance letter will advise whether the competition is limited geographically or further limited to participants in the developmental stage or the transitional stage of program participation.

D. SYNOPSIS

Single-source solicitations, which are to be awarded using Section 8(a) procedures, do not require synopsis in *FEDBIZ OPPS*. Competitive solicitations must be synopsized in the *FEDBIZ OPPS*, using the format prescribed in FAR Subpart 5.205(f). All 8(a) contract **awards**, whether single source or competitive, must be synopsized in *FEDBIZ OPPS*.

E. SINGLE SOURCE 8(a) CONTRACTS

Single Source Acquisitions are either above the Simplified Acquisition Threshold or below the threshold. Below are instructions for each category of contracts.

1. Single Source Acquisitions (under \$100,000)

For single source acquisitions under the Simplified Acquisition Threshold (\$100,000), the contract specialist must select an 8(a) firm and then verify that the firm is still in the 8(a) program by printing out the company's profile from the SBA's ProNet database located at <http://pro-net.sba.gov>. The profile must be included in the Purchase Order documentation. An offering letter is not required for simplified acquisitions. The contract specialist must use the procedures outlined in Part 13 of the FAR (commercial item test program acquisitions over \$100,000 are not eligible for this program). The contract specialist then writes a purchase order and includes the clause at HHSAR 52.219-70XX Section 8(a) Direct Awards (TBT) in the order. (See appendix 8-2). The Contracting Officer then signs the purchase order. Once signed, the contract specialist must send a copy of the purchase order to the SBA district office in which the 8(a) is headquartered. The purchase order should be faxed or sent by electronic methods and be addressed to the Business Opportunity Specialist (BOS) responsible for the business plan of the 8(a) vendor. (See Appendix 8-4 – Sample Cover Page for Use on Purchase Orders Awarded Under the PA.)

2. Single Source Solicitations (over \$100,000)

Under the PA procedures, an offering letter must be sent to the appropriate SBA office (see Section D above). The SBA has five (5) working days to respond to the offering letter with an acceptance letter. If the SBA does not respond within five working days, the contract specialist must contact the SBA office immediately. An acceptance letter must be received from SBA prior to proceeding with the 8(a) acquisition.

Once an acceptance letter has been received, the contract specialist may proceed with requesting a proposal from the 8(a) company. The contract specialist may use any method for this request including the use of an RFP, if necessary. In any event, the 8(a) firm or concern should be given a complete copy of a SOW, Section B pricing information, and the representations and certifications required for completion prior to award. The contracting officer should allow a reasonable amount of time for the firm or concern to submit technical and cost proposals, although it is not a requirement to hold the solicitation open for 30 days.

Because the 8(a) single source contract is a non-competitive, negotiated instrument, the contracting officer and technical representative have considerable latitude to discuss, and if necessary, to refine the statement of work during the negotiation process. Discussions should verify that the firm or concern fully understands the work to be performed, especially when negotiating the firm or concern's first contract with a particular agency. Once technical and price negotiations have been completed, the contract specialist must determine that the contract will not exceed a fair market price.

The contract specialist then prepares the contractual document either using an SF-33, SF-26, SF-1442, or SF-1449 (in this case, the dollar amount of the contract must not exceed the single source threshold of \$3,000,000 for services and \$5,000,000 for manufacturing). The contractual document must contain the clause at HHSAR 52.219-70XX Section 8(a) Direct Awards (Appendix 8-2 - date to be determined) and should then be signed by both the 8(a) vendor and the contracting officer. Once the contract has been executed, a copy of the document should be forwarded to the appropriate SBA office within five days.

3. Contract Clauses

The Civilian Agency Acquisition Council (CAAC) has provided model Federal Acquisition Regulation (FAR) language (letter dated May 1, 1998) to be implemented by an amendment to the FAR after promulgation of an SBA final rule. This language is the basis for an approved class deviation to FAR Subpart 19.8. The deviation allows for 8(a) awards under \$100,000 offering to be made using the simplified acquisition

procedures of FAR Part 13; it does not allow for simplified acquisition procedures to be used for commercial item acquisitions exceeding \$100,000 and \$5 million. For acquisitions under \$100,000, offering letters to and acceptance letters from the SBA are not required. The referenced CAAC Letter serves as evidence of consultation with the Chairman of the CAAC, as required by FAR 1.404(a)(1). This consultation will apply only to deviations for 8(a) contracts that are executed under a PA that is consistent with the attached model coverage. (See Appendix 5-1 for Direct 8(a) Contracting Model Coverage.)

F. COMPETITIVE 8(a) CONTRACTS

The PA between the Department of the HHS and the SBA, signed in September 27, 2000, also applies to competitive 8(a) acquisitions. Detailed procedures are outlined below.

1. Offering Letter

An offering letter must be sent to the appropriate SBA office as outlined in Section D above. The SBA has five working days to respond to the offering letter with an acceptance letter. If the SBA does not respond within five working days, the contract specialist must contact the SBA office immediately. An acceptance letter must be received from SBA prior to proceeding with the 8(a) acquisition

2. Establishing Competitive 8(a) Source Lists

For competitive 8(a) procurements, the acquisition is synopsisized in *FEDBIZ OPPS*. The 8(a) firm or concerns who request a copy of the solicitation, plus any other qualified firm or concerns known to the OPDIV SBS or contracting officer, will constitute the list of concerns to receive the solicitation. (See Appendix 8-3 for Notice to Offerors)

3. Competitive 8(a) Solicitations

Competitive 8(a) acquisitions may be conducted using either sealed bids or competitive proposals. The same criteria for selecting the method of solicitation (sealed bid vs. competitive proposals) apply as for other competitive contracts. The solicitation package for a competitive 8(a) solicitation should not differ from that required for any other competitive procurement. The solicitation shall include a complete statement of work, detailed evaluation factors for award, and the clause at HHSAR _____ Section 8(a) Direct Awards (date to be determined). The solicitation shall also include the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with it Alternate III (Deviation).

The date of the 8(a) offeror's written self-certification as a small business, submitted with its initial offer including price, will be the date used by SBA to determine the concern's eligibility to receive the particular contract. Therefore, it is particularly important to obtain a complete set of representations and certifications from each 8(a) offeror.

4. Evaluation of Competitive 8(a) Offers

Offers from 8(a) concerns are evaluated in accordance with the evaluation factors listed in the solicitation. Evaluations shall proceed as they would for any competitive solicitation, whether sealed bid or competitive proposals. The General Accounting Office has recently ruled that it has jurisdiction to hear and decide protests of solicitation content and evaluation procedures used for competitive 8(a) procurements. Therefore, the contracting officer must use the same care to safeguard information and evaluate 8(a) offers as is required for other competitive procurements.

5. Negotiating the Competitive 8(a) Contract

Agency contracting officers are responsible for conducting all negotiations necessary for determining an apparent successful offeror on solicitations requiring competitive proposals. The SBA contracting officer is not usually involved in these negotiations.

6. Eligibility Determinations for Competitive Procurements

For competitive 8(a) acquisitions over \$100,000, the contracting officer shall submit the name, address, and telephone number of the apparent successful offeror (or low bidder) to the appropriate SBA BOS at the field office(s) servicing the identified 8(a) firm(s). The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next apparent successful offeror (or low bidder) to the cognizant SBA field office.

7. Preparing the Competitive 8(a) Contract Documents

The competitive 8(a) contract documents are prepared in the same way as Single Source 8(a) contract documents (See Paragraph F.2 above).

G. WITHDRAWAL OR MODIFICATION OF 8(a) SET-ASIDES

An individual 8(a) set-aside may be withdrawn or modified before award if the contracting officer determines that award would not be in the public interest (because of unreasonable price, for example.) A copy of the contracting officer's written determination to withdraw or modify a set-aside must be forwarded through the OPDIV SBS and the PCR to the OSDDBU or designee for approval prior to proceeding with the procurement. After the OSDDBU's or designee's approval, the contracting officer must notify the SBA of its intention to withdraw the requirement from the 8(a) program. SBA

has the right to appeal the withdrawal, particularly if it is based on price or price-related issues.

If the OSDBU or designee disagrees with the contracting officer, the matter may be referred to the OSDBU and the head of the contracting activity (the OPDIV head). The decision of the OSDBU is final. If no award can be made, the set-aside is automatically dissolved.

H. POST-AWARD ACTIONS

1. Coordination with the SBA and the DHHS OSDBU

Careful evaluation of the firm or concern's capabilities prior to award ensures that 8(a) contracts are performed successfully. However, any significant performance problems under an 8(a) contract shall be reported immediately by the contracting officer to the OPDIV SBS and the OSDBU. The SBA contracting officer should also be notified, as it may be possible for the SBA to provide assistance, which will enable the 8(a) firm or concern to satisfactorily complete the contract. The contracting officer must not initiate termination proceedings, either for default or for the convenience of the Government, without first informing the OPDIV SBS, OSDBU and the SBA contracting officer.

2. Approval of Lower Tier Subcontracting

SBA must give its approval before any of the performance under an 8(a) contract is subcontracted to another concern. This requirement is in addition to the overall limitations on subcontracting required for set-aside contracts (see FAR 52.219-14). SBA will not approve a proposed subcontracting arrangement if:

- The proposed subcontracting firm or concern is suspended, debarred, or determined ineligible by any Federal agency;
- SBA determines that the subcontracting firm or concern would control performance of the procurement;
- SBA determines that the proposed subcontract is not an arms length agreement; or
- SBA determines that the proposed subcontract is an attempt to circumvent the size regulations.

SBA is not required to approve each subcontract, and will generally accept the 8(a) concern's subcontracting arrangements if the limitation on subcontracting requirements is met. However, SBA must be informed of all subcontracting arrangements, and reserves the right to disapprove such agreements.

3. Contract Modifications

Contract modifications are negotiated between the contracting agency and the 8(a) firm. In general, unilateral modifications, such as a change in the Contracting Officer's Technical Representative, may be issued without the signature of the 8(a) firm. A copy of the modification should be sent to SBA within five days.

A modification within the scope of the initial contract may be issued whether the firm or concern has exited the 8(a) program or whether the concern is no longer small under the size standard for the contract.

A modification outside the scope of the initial 8(a) contract is considered a new contract action. If the 8(a) firm or concern has exited the program or is no longer small for that size standard, the modification cannot be issued. If the 8(a) firm or concern is still a program participant and still a small business, the modification may be issued as long as the estimated price falls below the applicable threshold for competition and SBA has issued an acceptance letter in response to the contracting agency's offering letter for all work falling outside of the scope of the current contract. If the estimated price exceeds the threshold for competition, the requirement must be competed among eligible 8(a) concerns.

4. Delivery Orders/Task Orders

It is the responsibility of the HHS contracting officer to monitor delivery orders against indefinite quantity-indefinite delivery contracts to ensure that the 8(a) firm is not subcontracting work beyond the established limitations. A copy of each delivery order should be forwarded to the appropriate SBA office within five days of execution.

On Multiple Award/IDIQ type contracts, contracting officers are responsible for ensuring that 8(a) firms are not burdened with terms and conditions that are not placed on other firm or concerns within the multiple award.

5. Exercising Options

Priced options under 8(a) contracts are exercised in the same manner as any contract option, except that a copy of the modification should be forwarded to the SBA office, which administers the contract.

Priced options may be exercised even if the 8(a) firm or concern has exited the 8(a) program or is no longer a small business under the size standard, which applies to the contract. As with any other contract, un-priced options are not allowed.

6. Performance of Contracts By Original 8(a) Concern

Any 8(a) contract (including options) awarded on or after June 1, 1989 must be performed by the 8(a) concern that initially received the contract. If the owner(s) upon whom eligibility was based relinquish ownership, the contract or option shall be terminated for the convenience of the Government. The SBA Administrator, on a non-delegable basis, may waive this requirement if certain conditions exist (such as the death or incapacity of the owner).

If the contracting officer determines that termination of the contract would severely impair attainment of the agency's program objectives or mission, and the SBA Administrator does not grant a waiver to the firm or concern, the contracting officer may request a waiver by immediately notifying SBA in writing. The request for waiver must be coordinated with the OSDDBU, and must be filed within 15 working days after the notice.

If SBA does not approve a waiver, the contracting officer must terminate the contract for convenience upon receipt of SBA's written request.

7. Contract Close-Out

A copy of the acceptance document and a copy of the final payment document shall be provided to SBA.

DIRECT 8(A) CONTRACTING MODEL COVERAGE

SMALL BUSINESS PROGRAMS (FAR PART 19)

SUBPART 19.800 GENERAL

Add subparagraph (d):

(d) Utilizing the Partnership Agreement (PAs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal procuring activities. If an agency is covered by an PA, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an PA; however, any such withdrawal shall have no effect on contracts currently awarded under the PA.

19.803 SELECTING ACQUISITIONS FOR THE 8(A) PROGRAM

Add 19.803-70 to read:

19.803-70 SIMPLIFIED PROCEDURES FOR 8(A) ACQUISITIONS UNDER PAS

Procuring activities may use the simplified acquisition procedures of Part 13 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) Participants. The following applies to such acquisitions:

- (a) Neither offering letters to, nor acceptance letters from the SBA are required.
- (b) The procuring activity will use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.
- (c) The contracting officer will issue the purchase order directly to the 8(a) firm.
- (d) Once an 8(a) firm or concern has been identified, the agency contracting officer will establish the price with the selected 8(a) firm or concern and prepare and issue a purchase order or contract in accordance with the provisions of Part 13. The applicable clauses prescribed in 19.811-3 shall be included in the award document.
- (e) The Contracting Officer will forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

19.804-2 AGENCY OFFERING

- (a) When applicable, this notification must identify that the offering is in accordance with the PA identified in 19.800.

19.804-3 SBA ACCEPTANCE

Add new 19.804-70 which will read:

19.804-70 SBA ACCEPTANCE UNDER PAS FOR ACQUISITIONS EXCEEDING \$100,000

- (a) Acceptance of requirements covered by PA's on acquisitions that exceed \$100,000.
- (1) The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 5 working days of receipt of the offer.
 - (2) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.
 - (3) SBA's acceptance letters should be faxed or e-mailed to the offering contracting agency.
 - (4) If the procuring activity has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the procuring activity may assume that the requirement has been accepted and proceed with the acquisition.
- (b) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) firm or concern.

19.805 COMPETITIVE 8(A)

19.805-2 PROCEDURES

Add to 19.805-2 new paragraphs (a) and (c)(3) to read as follows:

- (a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see Part 13). The award process is significantly streamlined where an PA is in place.
- (c) (3) For requirements exceeding \$100,000 processed under the PA cited in 19.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid requirements) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the

firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror (as applicable) to the cognizant SBA field office.

19.806 PRICING THE 8(A) CONTRACT

Add paragraph (a) to read:

- (a) When required by Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) firm or concern if they are awarding the contract under the PA cited in 19.800.

19.808-1 SOLE SOURCE

Add new paragraphs 19.808-1 (a) and (b) to read:

- (a) If the acquisition is conducted under an PA cited in 19.800, the 8(a) firm or concern is responsible for negotiating with the agency within the time established by the agency. If the 8(a) firm or concern does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.
- (b) If the acquisition is conducted under an PA cited in 19.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

19.811-1 SOLE SOURCE

19.811-1. Add new paragraph (d) to read as follows

- (d) If the award is to be made under an PA cited in 19.800, the contract to be awarded by the procuring activity to the 8(a) firm shall be prepared in accordance with the procuring activity's normal procedures, given contract type and dollar a PAnt, that the procuring activity would use for a similar, non-8(a) acquisition, except for the following:
 - (1) The award form shall cite 41 U.S.C. 253 (c)(5) or 10 U.S.C. 2304 (c)(5) (as appropriate) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.
 - (2) Appropriate contract clauses shall be included, as necessary, to reflect that the acquisition is an 8(a) contract made under the authority of an PA cited in 19.800.
 - (3) The procuring activity shall include SBA's requirement number on the contract unless the acquisition does not exceed \$100,000.

- (4) A single award document shall be used between the agency and the 8(a) firm or concern. As such, a single signature by the agency's contracting officer who is identified as having concurrent authority under an PA cited in 19.800 to enter into 8(a) contracts will suffice (i.e., an SBA signature will not be required). The 8(a) firm or concern's signature shall be placed on the award document as the prime firm or concern. The 8(a) firm or concern's name and address shall be placed in the "**awarded to**" or "**firm or concern name**" block on the appropriate forms.

19.811-2 COMPETITIVE

Add paragraphs (a) and (b) to read as follows:

- (a) If the award is to be made under delegation of 8(a) contracting authority, competitive contracts for 8(a) firms will be prepared in accordance with the same standards as 8(a) sole source contracts. See 19.811-1.
- (b) If the acquisition is conducted under an PA cited in 19.800, the process for obtaining signatures shall be as specified in 19.811-1(d).

19.811-3 CONTRACT CLAUSES

Add paragraphs 19.811-3 (d)(3) and (f) to read:

- (d)(3) The clause at 52.219-18 will be used with the Alternate (Deviation) at 52.219-18, when the acquisition is processed under the PA cited in 19.800.
- (f) The contracting officer shall insert the clause at 52.219-70XX, Section 8(a) Direct Award, in direct award contracts and purchase orders processed under the PA cited at 19.800; the clauses at 52.219-11, Special 8(a) Contact Conditions, 52.219-12, Special 8(a) Subcontract conditions, and 52.219-17, Section 8(a) award, shall not be used.

19.812 CONTRACT ADMINISTRATION

Add 19.812 (d) to read:

- (d) Awards under the PA cited in 19.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) firm or concern to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219-18 ALTERNATE FOR ACQUISITIONS UNDER 19.800

(Deviation) (date)

When the acquisition is processed under the PA cited in 19.800, substitute the following for the paragraph in 52.219-18:

- (c) Any award resulting from this solicitation will be made directly by the contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

52.219-70XX SECTION 8(A) DIRECT AWARDS.

As prescribed in 19.811-3(f), insert the following clause:

SECTION 8(A) DIRECT AWARD (DATE)

- (a) This contract is issued as a direct award between the contracting activity and the 8(a) firm or concern pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the *[Insert Agency Name]*. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) firm or concern under the 8(a) program. Notwithstanding any other term and condition set forth in this contract, SBA is prime firm or concern. The cognizant SBA district office is:

[To be completed by Contracting Officer at time of award]

- (b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contacting activity may assign contract administration functions to a contract administration office.
- (c) The firm or concern agrees:
 - (1) to notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or controls shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) it will adhere to the requirements of 52.219-14, Limitations on Subcontracting.
(END OF CLAUSE)

(Solicitation Cover Page for Contracts)

NOTICE TO OFFERORS

This solicitation is being processed under a Partnership Agreement (PA) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA), under which the SBA has delegated to HHS, authority to enter into 8(a) contracts directly with eligible 8(a) firms. The PA implements innovative and effective methodology designed to streamline the acquisition process for awards under the 8(a) program. The *[name of Operating Division]* is a designated pilot agency under the PA.

Any solicitation and subsequent awards processed under the referenced PA, *[name of Operating Division]* will make the award directly to the 8(a) firm. SBA will not be a signatory to the award resulting from this solicitation. SBA will, however, retain responsibility for 8(a) certification, administer other eligibility related issues under the 8(a) program, and be available to 8(a) firms for counseling and assistance.

If you have any questions pertaining to this PA, please contact *[insert name, mailing address and telephone number of the Operating Division contact person]*.

HHS/SBA PA 1 (SEP 2000)

Servicing Small Business Administration Field Office

To facilitate communications, it is requested that the 8(a) participant submitting this offer/bid provide the following information regarding the firms cognizant servicing Small Business Administration (SBA) office.

Servicing SBA Office _____
Address _____

Cognizant SBA Business Opportunity Specialists Name _____

Phone _____


SAMPLE COVER PAGE FOR USE ON PURCHASE ORDERS AWARDED UNDER THE PA

NOTICE

The attached Purchase Order is being processed under a Partnership Agreement (PA) between the Department of Health and Human Services (HHS) and the Small Business Administration (SBA), under which the SBA has delegated to the HHS authority to make 8(a) awards directly to eligible 8(a) firms. The PA implements a HHS acquisition initiative designed to streamline the acquisition process for awards under the 8(a) program. The *[insert name of Operating Division]* is a designated agency under this PA.

Under the terms of the PA, SBA will not be a signatory to this award. SBA will, however retain responsibility for 8(a) certification, administer other eligibility related issues under the 8(a) program, and be available to 8(a) firms for counseling and assistance.

In keeping with the PA, you are not to begin performance under the attached Purchase Order until 7 working days after the issue date to permit time for the SBA to verify your eligibility as a participant in the 8(a) program. You may begin performance on the 8th work day following the award date, unless you receive notification from the *[Operating Division]* contracting officer who signed the purchase order not to begin performance. If you have any questions concerning this procedure, please contact the designated contracting officer. Any questions pertaining to your participation in the 8(a) program should continue to be directed to your servicing SBA Business Opportunity Specialist.

 **TE:** This requirement is being processed under a Partnership Agreement (PA) between the SBA and HHS, under which procedural changes to the customary 8(a) process have been made. Upon SBA acceptance of this offer, the *[Operating Division]* contracting officer will solicit a proposal, hold discussions, and make the contract award directly to the 8(a) firm, pursuant to the procedures developed under the PA.

SAMPLE OFFERING LETTER TO SBA FOR AN 8(A) CONTRACT WARD

Ms. Diana Jones
Business Opportunity Specialist
U.S. Small Business Administration
P.O. Box 34500
Washington, DC 20043-4500

The following additional information is provided pursuant to Federal Acquisition Regulation 19.804-2 for this acquisition:

1. The Statement of Work is provided as an enclosure.
2. The period of performance is a base period commencing from 1 October 200X through September 30, 200X, with an option period consisting of one year.
3. The applicable NAICS code is_____, size standard \$XX M.
4. The total estimated amount for this requirement is \$XX,XXX.00 outlined as follows:

Base Period: \$XXX,XXX
Option Year 1: \$XXX,XXX

5. No special restrictions or geographical limitations exist for this requirement.
6. The selected firm is deemed to be capable of providing the services described in the enclosed Statement of Work.
7. A time and materials contract is anticipated.
8. Because the Program Support Centers Computer Replacement system is a new system, no previous maintenance requirement has existed. ABC Corp., developed the previous system under Contract XXX-03-D-XXXX.
9. No solicitation for this specific acquisition has been issued indicating this requirement as a small business or small disadvantaged business set-aside nor has the requirement been publicly announced.

10. The recommended firm or concern is ABC, Corp., Somewhere, MD.
11. No bonding requirements exist.
12. No other 8(a) company has marketed this effort.
13. No SBA district or regional offices have asked for this acquisition under the 8(a) program.
14. It is recommended that this acquisition be pursued on a sole source basis with the firm or concern nominated herein.

Please notify this office of your decision regarding acceptance of this offer. If accepted, please provide the current 8(a) status of the nominated firm as well as the delegation of authority to negotiate and administer the resultant subcontract.

Should additional information be required, please contact the undersigned at (202) 690-7300. **The fax number for this office is (202) 260-4872.**

Sincerely,

Jane Doe
Contracting Officer

Enclosure